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IN THE
COURT OF APPEALS OF INDIANA

JAMIE GLOVER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0512-CR-1233
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0503-FB-44206

September 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jamie Glover (Glover) appeals the sentence imposed by the trial court pursuant to his plea of guilty to stalking as a class D felony and for being an habitual offender.

We affirm.

ISSUE

> Whether the sentence imposed by the trial court was inappropriate in light of the nature of the offense and character of the offender.

FACTS

On March 24, 2005, the State charged Glover with four counts of stalking: one count as a class B felony; two counts as class C felonies; one count as a class D felony; nine counts of invasion of privacy, all as class A misdemeanors; two counts of criminal mischief as class A misdemeanors; one count of criminal confinement as a class B felony; one count of battery as a class C felony; and one count of pointing a firearm as a class A misdemeanor. The State filed an habitual offender enhancement as well.

On October 20, 2005, a plea agreement was filed with the trial court. Therein Glover agreed to plead guilty to count VI, stalking as a class D felony, and the habitual offender sentencing enhancement, and the State agreed to dismiss the other eighteen counts. The plea agreement provided the following for sentencing:

> Cap of four years on the initial executed portion of the sentence; sentence may include any additional probation or suspended sentence the Court deems appropriate.

(App. 108-109). The trial court accepted the plea. The matter was set for a sentencing hearing and a pre-sentence investigative report (PSI) was ordered. On November 9, 2005, at the sentencing hearing, the trial court reviewed the PSI report and heard

arguments of counsel. The trial court sentenced Glover to one and a half years for stalking, as a class D felony. The habitual offender sentence enhancement was supported by two of Glover's prior convictions, which were for burglary as a class C felony committed on October 28, 1993 and a 1999 conviction for auto theft, as a class C felony. His sentence was enhanced by four and one half years as an habitual offender. The aggregate sentence was six years – four years executed, two years suspended, and two years of probation.

DECISION

Sentencing decisions are generally within the trial court's discretion and will be reversed only for an abuse of discretion. Comer v. State, 839 N.E.2d 721, 725 (Ind. Ct. App. 2005), trans. denied. This court will not revise a sentence authorized by statute unless it is inappropriate in light of the nature of the offense and the character of the offender, as authorized by Indiana Constitution Art. VII, Section 4 and Indiana Appellate Rule 7(B). Pinkston v. State, 836 N.E.2d 453, 458 (Ind. Ct. App. 2005), trans. denied. However, we exercise great restraint in reviewing and revising sentences and recognize the special expertise of the trial bench in making sentencing decisions. Id.

When considering the appropriateness of the sentence for the crime committed, we initially focus upon the presumptive sentence. Hayden v. State, 830 N.E.2d 923, 928 (Ind. Ct. App. 2005), trans. denied. The presumptive sentence is meant to be the starting point for the trial court's consideration of the sentence that is appropriate for the crime committed. Id. The presumptive sentence for a class D felony is one and a half years, with not more than one and one-half years added for aggravating circumstances and not

more than one year subtracted for mitigating circumstances.[1] I.C. § 35-50-2-7. The habitual offender sentence enhancement statute provides that "[t]he court shall sentence a person found to be a habitual criminal to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years." I.C. § 35-50-2-8.

Glover argues the sentence imposed in this matter was inappropriate because "[t]he offense of which Defendant/Appellant was convicted was not a violent offense. No physical force was exerted against the victim, no physical injury occurred, and no physical items or property were taken from him." Glover's Br. 10. We disagree with Glover's position that the sentence was inappropriate.

The trial court when sentencing Glover found that:

> One of the things that I have found in mitigation is the fact that you have admitted some responsibility by pleading guilty to the stalking charge and admitting that you are a habitual offender as well so you've pled guilty, accepted responsibility and for that you should receive some recognition in mitigation. Now, I don't find that to be a strong mitigator.

(Tr. 48). The trial court found as aggravating factors two prior felony convictions for auto theft, one as a class D felony and one as a class C felony which were committed in 1989 and 1990, respectively. The trial court then balanced the mitigating and aggravating factors and found the aggravating factors outweighed the mitigators.

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[1] Between the date that Glover committed the instant offenses and the date of sentencing, Indiana Code section 35-50-2-1.3 (2005) was amended to provide for an "advisory" rather than "presumptive" sentence. Another panel of this court recently held that the change constituted a substantive rather than procedural change that should not be applied retroactively. Weaver v. State, 845 N.E.2d 1066, 1072 (Ind. Ct. App. 2006), trans. denied.

The trial court sentenced Glover to the presumptive sentence of one and a half years on the stalking offense, as a class D felony. Also, regarding the enhanced sentence for being an habitual offender, the trial court chose to enhance the class D felony, that being three times the presumptive sentence, amounting to four and one half years. Because the presumptive sentence is the starting point, we do not find that the sentence imposed was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

RILEY, J., and VAIDIK, J., concur.